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**STELLAR RECOVERY, INC.**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TIMOTHY TOTH and GARY HALL,  
individually and on behalf of all others similarly  
situated.

### **Plaintiffs,**

VS.

## STELLAR RECOVERY, INC.,

**Defendant.**

Case No: 2:13-cv-01276-LDG(GWF)

**DEFENDANT'S EVIDENTIARY  
OBJECTIONS TO, AND REQUEST TO  
STRIKE PORTIONS OF, PLAINTIFFS'  
EVIDENCE SUBMITTED IN SUPPORT OF  
ITS OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Action Filed: July 19, 2013  
Trial Date: None Set

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1       Defendant, STELLAR RECOVERY, INC. (“Defendant”), submits the following evidentiary  
 2 objections to, and requests to strike portions of, the evidence submitted by Plaintiffs, TIMOTHY TOTH  
 3 and GARY HALL (“Plaintiffs”), in support of their Opposition to Defendant’s Motion for Summary  
 4 Judgment.

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6       **EVIDENTIARY OBJECTIONS TO DECLARATION OF JEFFREY A. HANSEN**

7       1. **Jeffrey A. Hansen Has Not Been Qualified As An Expert.**

8       Defendant’s Objections:

9       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 10 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert’s opinion to be admissible,  
 11 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 12 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert’s opinion cannot be  
 13 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 14 by “knowledge, skill, experience, training or education.” Fed. R. Evid. 702. The proponent of expert  
 15 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 16 525 (5th Cir. 2004). In this case, Plaintiffs do not offer evidence as to the special “knowledge, skill,  
 17 experience, training or education” that would qualify Mr. Hansen as an expert. Furthermore, Plaintiffs  
 18 offer as Exhibit C in support of their Opposition the curriculum vitae of Mr. Hansen, yet this document  
 19 is not authenticated by Mr. Hansen, and therefore should be ruled inadmissible under Federal Rule of  
 20 Evidence 901.

21       In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 22 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993), some of which are the potential rate of  
 23 error, and general acceptance in the scientific community. In determining the admissibility of expert  
 24 testimony under Rule 702, district courts must consider whether the expert can testify competently on  
 25 the areas he intends to discuss, whether the expert’s methodology is sufficiently reliable, and whether  
 26 the expert’s testimony, through the application of his scientific, technical, or specialized expertise, will  
 27 assist the trier of fact to understand the evidence. *City of Tuscaloosa v. Harcros Chem. Inc.*, 158 F.3d  
 28 548, 562 (11th Cir. 1998). If the district court concludes that an expert has failed to sufficiently justify

1 his methodology or lay sufficient foundation for his opinion, the court will strike that opinion as  
 2 inadmissible. *See U.S. v. Gabaldon*, 389 F.3d 1090, 1099 (10th Cir. 2004) (finding expert's opinion  
 3 entirely conclusory and unsupported by any scientific evidence or reasoning); *Salas v. Carpenter*, 980  
 4 F.2d 299, 305 (5th Cir. 1992) (holding that an adverse expert's opinion stated ultimate conclusions  
 5 without providing any factual basis).

6 Here, Mr. Hansen does not claim to have ever examined Defendant's technology system or even  
 7 spoken with any employee, agent, or representative of Defendant regarding Defendant's technology  
 8 system. Further, he fails to describe any of the tests he performed or scientific studies he conducted that  
 9 formed the basis for his statements regarding Defendant's technology. In fact, Plaintiffs' counsel never  
 10 even requested that Mr. Hansen have the opportunity to examine Defendant's technology system, even  
 11 after Defendant's counsel made the offer. (Declaration of Sean P. Flynn ("Flynn Decl."), ¶ 23.) Because  
 12 Mr. Hansen is not qualified, his testimony should be disregarded and his testimony stricken.

13

14 2. **Hansen Decl., Para. 2 Lacks Foundation And Is Irrelevant.**

15 Hanson Decl., Para. 2:

16 "I have served as an expert witness and consultant to law firms in order to conduct computer  
 17 forensics, and I also assist in electronic discovery issues. My firm was retained in this case to assist  
 18 Plaintiffs' counsel in evaluating and analyzing electronic data related to outbound dial lists and other  
 19 electronic data associated with computer systems that may have been used by Defendant or its agents. I  
 20 have extensive experience dealing with data warehousing, including data warehousing related to  
 21 telemarketing and autodialers in general. I am also a consultant to companies that engage in the use of  
 22 autodialers, and I am familiar with their use and their procedures and all technical aspects of that  
 23 business. In that capacity, I have assembled autodialers, interfaced with telecommunication providers,  
 24 configured, maintained and operated all aspects of autodialers. I am familiar with the manner in which  
 25 outbound dial lists are used and maintained in the telemarketing industry, which I understand to be  
 26 similar to the debt collection industry. I am also familiar with the procedures involved, and I have  
 27 personally engaged in data warehousing regarding the compilation of certain lists, including  
 28 demographic and target audience lists for telemarketing, and have personally repaired defective lists to

1 eliminate improperly formatted and corrupted data. I am also familiar with and know how to use the  
 2 databases containing cell block identifiers and ported number lists, both of which identify cellular type  
 3 telephone numbers.”

4       Defendant’s Objections:

5       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 6 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert’s opinion to be admissible,  
 7 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 8 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert’s opinion cannot be  
 9 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 10 by “knowledge, skill, experience, training or education.” Fed R. Evid. 702. The proponent of expert  
 11 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 12 525 (5th Cir. 2004).

13       In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 14 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 15 have ever examined Defendant’s technology system or even spoken with any employee, agent, or  
 16 representative of Defendant regarding Defendant’s technology system. Further, he fails to describe any  
 17 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 18 regarding Defendant’s technology. In fact, Plaintiffs’ counsel never even requested that Mr. Hansen  
 19 have the opportunity to examine Defendant’s technology system, even after Defendant’s counsel made  
 20 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 21 and his testimony stricken.

22       **Relevance: Fed. R. Evid. 401, 402.** An expert’s opinion must be relevant. *Pipitone v.*  
 23 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert’s opinion is based on scientific studies  
 24 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 25 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 26 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 27 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant’s technology.  
 28 In fact, Mr. Hansen fails to state that he ever even examined Defendant’s technology system. Likewise,

1 Mr. Hansen does not have experience in the debt collection industry in which Defendant's business  
2 operates ("I am familiar with...the telemarketing industry, which I understand to be similar to the debt  
3 collection industry"). Mr. Hansen's testimony is conclusory and therefore irrelevant. Thus, it should be  
4 stricken.

5 **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen's statement that "I am familiar with...the  
6 telemarketing industry, which I understand to be similar to the debt collection industry" is devoid of any  
7 foundation, and thus should be deemed inadmissible by this Court.

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9 3. **Hansen Decl., Para. 3 Lacks Foundation And Is Irrelevant.**

10 Hanson Decl., Para. 3:

11 "It is my understanding that the Defendant was using a Predictive dialing system known as  
12 "Livevox." Livevox is a cloud based VoIP (Voice over IP) solution for outbound call centers. Lists of  
13 numbers to be called are loaded into a "campaign," stored in a database on the system, and called using  
14 various SIP providers. The system has the capacity to call lists of numbers in "predictive" dialing mode,  
15 or to deliver IVR (artificial voice) responses."

16 Defendant's Objections:

17 **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
18 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,  
19 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
20 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
21 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
22 by "knowledge, skill, experience, training or education." Fed R. Evid. 702. The proponent of expert  
23 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
24 525 (5th Cir. 2004).

25 In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
26 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
27 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
28 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any

1 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
2 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
3 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
4 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
5 and his testimony stricken.

6       **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
7 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
8 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
9 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
10 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
11 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
12 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
13 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant. Mr.  
14 Hansen's testimony is conclusory, thus, it should be disregarded.

15       **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
16 Defendant's technology, further indicated by his statement that "it is my *understanding* that the  
17 Defendant was using a Predictive dialing system..." (emphasis added). Without personal knowledge,  
18 Mr. Hansen's opinions lack foundation and therefore, they must be disregarded.

19

20 4. **Hansen Decl., Para. 4 (Plaintiffs' SS Nos. 5-6) Lacks Foundation And Is Irrelevant.**

21       Hanson Decl., Para. 4:

22       "I am of the opinion that Defendant used an automated telephone dialing system to place  
23 telephone calls to Plaintiff, or more specifically, that the characteristics of the Livevox dialing system  
24 meet the definition of equipment that has the capacity to store or produce numbers to be called, using a  
25 random or sequential number generator, and the capacity to call such numbers."

26       Defendant's Objections:

27       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
28 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,

1 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 2 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
 3 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 4 by "knowledge, skill, experience, training or education." Fed. R. Evid. 702. The proponent of expert  
 5 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 6 525 (5th Cir. 2004).

7 In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 8 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 9 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
 10 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any  
 11 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 12 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
 13 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
 14 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 15 and his testimony stricken.

16 **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
 17 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 18 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 19 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 20 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 21 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 22 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 23 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant. Mr.  
 24 Hansen's testimony is conclusory, thus, it should be disregarded.

25 **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
 26 Defendant's technology, further indicated by his statement that "it is my *understanding* that the  
 27 Defendant was using a Predictive dialing system..." (emphasis added). Without personal knowledge,  
 28 his opinions lack foundation and thus must be disregarded.

1       5. **Hansen Decl., Para. 5 (Plaintiffs' SS No. 5) Lacks Foundation And Is Irrelevant.**2       Hanson Decl., Para. 5:3       “The fact that Defendant’s dialer places predictive dialed calls to numbers stored by Defendant’s  
4       dialing system has the capacity to dial numbers without human intervention, thereby meeting the  
5       definition of an ATDS, as clarified in the FCC’s 2003 Order.”6       Defendant’s Objections:7       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
8       Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert’s opinion to be admissible,  
9       the expert must first be qualified. *See* Fed. R. Evid. 702; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
10      152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert’s opinion cannot be  
11      connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
12      by “knowledge, skill, experience, training or education.” Fed. R. Evid. 702. The proponent of expert  
13      testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
14      525 (5th Cir. 2004).15       In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
16      *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
17      have ever examined Defendant’s technology system or even spoken with any employee, agent, or  
18      representative of Defendant regarding Defendant’s technology system. Further, he fails to describe any  
19      of the tests he performed or scientific studies he conducted that formed the basis for his statements  
20      regarding Defendant’s technology. In fact, Plaintiffs’ counsel never even requested that Mr. Hansen  
21      have the opportunity to examine Defendant’s technology system, even after Defendant’s counsel made  
22      the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
23      and his testimony stricken.24       Mr. Hansen is not qualified to testify as an expert on Defendant’s technology, nor is he qualified  
25      to opine on the Federal Communication Commission’s 2003 Order, FCC Order 03-153 at p. 77.  
26      Plaintiffs present no evidence to suggest that Mr. Hansen is qualified to comment upon the legal  
27      definition of an automatic telephone dialing system, or ATDS, which has been defined by Congress at  
28      47 U.S.C. § 227(a)(1), a statute which has been interpreted to have its plain meaning as stated in

1      *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 (9th Cir. 2009).

2      **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
 3      *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 4      dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 5      studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 6      determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 7      Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 8      In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 9      Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
 10     Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
 11     dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
 12     though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
 13     thus, it should be disregarded.

14     **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
 15     Defendant's technology, further indicated by his statement that "it is my *understanding* that the  
 16     Defendant was using a Predictive dialing system..." (emphasis added). Without personal knowledge,  
 17     his opinions lack foundation and thus must be disregarded.

18     6.      **Hansen Decl., Para. 6 Lacks Foundation And Is Irrelevant.**

19        **Hanson Decl., Para. 6:**

20        "Further, the properties of Defendant's dialing system meets (sic) the definition of an ATDS as  
 21        further clarified by the FCC Order 12-56, wherein, the FCC stated, "[u]nder the TCPA, the term  
 22        'automatic telephone dialing system' is defined as 'equipment which has the capacity (A) to store or  
 23        produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial  
 24        such numbers.' Id. at § 227(a)(1). The Commission has emphasized that this definition covers any  
 25        equipment that has the specified capacity to generate numbers and dial them without human intervention  
 26        whether or not the numbers called are randomly or sequentially generated or come from calling lists.  
 27        *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket  
 28        No. 02-278, Report and Order, 18 FCC Rcd 14014 at 14092, para. 133 (2003 TCPA Order)."

1           Defendant's Objections:

2           **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 3 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,  
 4 the expert must first be qualified. *See* Fed. R. Evid. 702; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 5 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
 6 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 7 by "knowledge, skill, experience, training or education." Fed. R. Evid. 702. The proponent of expert  
 8 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 9 525 (5th Cir. 2004).

10          In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 11 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 12 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
 13 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any  
 14 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 15 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
 16 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
 17 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 18 and his testimony stricken.

19          Mr. Hansen is not qualified to testify as an expert on Defendant's technology, nor is he qualified  
 20 to opine on the Federal Communication Commission's Orders. Plaintiffs present no evidence to suggest  
 21 that Mr. Hansen is qualified to comment upon the legal definition of an automatic telephone dialing  
 22 system, or ATDS, which has been defined by Congress at 47 U.S.C. § 227(a)(1), a statute which has  
 23 been interpreted to have its plain meaning as stated in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d  
 24 946, 951 (9th Cir. 2009).

25          **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
 26 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 27 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 28 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to

1 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 2 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 3 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 4 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
 5 Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
 6 dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
 7 though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
 8 thus, it should be disregarded.

9       **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
 10 Defendant's technology, further indicated by his statement that "it is my *understanding* that the  
 11 Defendant was using a Predictive dialing system..." (emphasis added). Without personal knowledge,  
 12 his opinions lack foundation and thus must be disregarded.

13

14 7. **Hansen Decl., Para. 7 (Plaintiffs' SS No. 5) Lacks Foundation And Is Irrelevant.**

15       Hanson Decl., Para. 7:

16       "Thus, it is my expert opinion, Defendant used a dialer which constitutes an ATDS, under the  
 17 TCPA definition, as clarified by FCC orders as it has the capacity to either call numbers stored or to call  
 18 numbers generated by a number generator."

19       Defendant's Objections:

20       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 21 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,  
 22 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 23 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
 24 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 25 by "knowledge, skill, experience, training or education." Fed. R. Evid. 702. The proponent of expert  
 26 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 27 525 (5th Cir. 2004).

28       In this case, there is no evidence put forth that satisfies the factors for expert reliability in

1     *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 2 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
 3 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any  
 4 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 5 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
 6 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
 7 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 8 and his testimony stricken.

9           Mr. Hansen is not qualified to testify as an expert on Defendant's technology, nor is he qualified  
 10 to opine on the Federal Communication Commission's Orders. Plaintiffs present no evidence to suggest  
 11 that Mr. Hansen is qualified to comment upon the legal definition of an automatic telephone dialing  
 12 system, or ATDS, which has been defined by Congress at 47 U.S.C. § 227(a)(1), a statute which has  
 13 been interpreted to have its plain meaning as stated in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d  
 14 946, 951 (9th Cir. 2009).

15           **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
 16 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 17 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 18 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 19 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 20 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 21 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 22 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
 23 Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
 24 dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
 25 though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
 26 thus, it should be disregarded.

27           **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
 28 Defendant's technology, further indicated by his statement that "it is my *understanding* that the

1 Defendant was using a Predictive dialing system..." (emphasis added). Without personal knowledge,  
2 his opinions lack foundation and thus must be disregarded.

3 **EVIDENTIARY OBJECTIONS TO DECLARATION OF TIMOTHY TOTH**

4 1. **Mr. Toth's Testimony, Paragraph 4, Is Irrelevant.**

5 Toth Decl., Para. 4:

6 "In April, 2013, I began receiving calls from Defendant about a debt owed by someone else."

7 Defendant's Objections:

8 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact  
9 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
10 determining the action." Mr. Toth's declaration is irrelevant to the issue of an automatic telephone  
11 dialing system. As such, this testimony should be stricken.

12

13 2. **Mr. Toth's Testimony, Paragraph 5, Is Irrelevant.**

14 Toth Decl., Para. 5:

15 "Prior to April, 2013, I had never before been contacted by Defendant regarding the alleged  
16 debt."

17 Defendant's Objections:

18 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact  
19 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
20 determining the action." Mr. Toth's declaration is irrelevant to the issue of an automatic telephone  
21 dialing system. As such, this testimony should be stricken.

22

23 3. **Mr. Toth's Testimony, Paragraph 6, Is Irrelevant.**

24 Toth Decl., Para. 6:

25 "In April, 2013, I was not a customer of, nor did I have a business relationship with, Defendant."

26 Defendant's Objections:

27 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact  
28 more or less probable than it would be without the evidence; and (b) the fact is of consequence in

1 determining the action.” Mr. Toth’s declaration is irrelevant to the issue of an automatic telephone  
2 dialing system. As such, this testimony should be stricken.

3

4. **Mr. Toth’s Testimony, Paragraph 7, Is Irrelevant.**

5 Toth Decl., Para. 7:

6 “At not (sic) time did I solicit the call described in Paragraph 4 above, which call was unwanted  
7 by me.”

8 Defendant’s Objections:

9 **Relevance: Fed. R. Evid. 401, 402.** “Evidence is relevant if (a) it has the tenancy to make a fact  
10 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
11 determining the action.” Mr. Toth’s declaration is irrelevant to the issue of an automatic telephone  
12 dialing system. As such, this testimony should be stricken.

13

14. **Mr. Toth’s Testimony, Paragraph 8, Lacks Foundation And Is Improper.**

15 Toth Decl., Para. 8:

16 “At no time did I give Defendant express consent to contact me on my cell phone via an  
17 automatic telephone dialing system.”

18 Defendant’s Objections:

19 **Improper Lay Opinion: Fed. R. Evid. 701.** Under Federal Rule of Evidence 701, if a witness  
20 is not testifying as an expert, his testimony is limited to one that is “(a) rationally based on the witness’s  
21 perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue;  
22 and (3) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”  
23 Here, there is no evidence that Mr. Toth is being put forth to offer expert testimony, yet he opines that  
24 Defendant contacted him “via an automatic telephone dialing system.” There is no indication that Mr.  
25 Toth has ever examined Defendant’s technology system or has any information regarding Defendant’s  
26 technology system. Mr. Toth has absolutely no personal knowledge regarding Defendant’s technology,  
27 and could not opine on it if he did as he has not been qualified to do so.

28 **Lacks Foundation: Fed. R. Evid. 602.** Mr. Toth has no personal knowledge regarding

1 Defendant's technology. Without personal knowledge, his opinions lack foundation and thus must be  
2 disregarded.

3

4 **EVIDENTIARY OBJECTIONS TO DECLARATION OF GARY HALL**

5 1. **Mr. Hall's Testimony, Paragraph 4, Is Irrelevant.**

6 Hall Decl., Para. 4:

7 "In June, 2013, I began receiving calls from Defendant about a debt owed by someone else."

8 Defendant's Objections:

9 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact  
10 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
11 determining the action." Mr. Hall's declaration is irrelevant to the issue of an automatic telephone  
12 dialing system. As such, this testimony should be stricken.

13

14 2. **Mr. Hall's Testimony, Paragraph 5, Is Irrelevant.**

15 Hall Decl., Para. 5:

16 "Prior to June, 2013, I had never before been contacted by Defendant regarding the alleged  
17 debt."

18 Defendant's Objections:

19 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact  
20 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
21 determining the action." Mr. Hall's declaration is irrelevant to the issue of an automatic telephone  
22 dialing system. As such, this testimony should be stricken.

23

24 3. **Mr. Hall's Testimony, Paragraph 6, Is Irrelevant.**

25 Hall Decl., Para. 6:

26 "In June, 2013, I was not a customer of, nor did I have a business relationship with, Defendant."

27 Defendant's Objections:

28 **Relevance: Fed. R. Evid. 401, 402.** "Evidence is relevant if (a) it has the tenancy to make a fact

1 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
2 determining the action.” Mr. Hall’s declaration is irrelevant to the issue of an automatic telephone  
3 dialing system. As such, this testimony should be stricken.

4

5 **Mr. Hall’s Testimony, Paragraph 7, Is Irrelevant.**

6 Hall Decl., Para. 7:

7 “At not (sic) time did I solicit the call described in Paragraph 4 above, which call was unwanted  
8 by me.”

9 Defendant’s Objections:

10 **Relevance: Fed. R. Evid. 401, 402.** “Evidence is relevant if (a) it has the tenancy to make a fact  
11 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
12 determining the action.” Mr. Hall’s declaration is irrelevant to the issue of an automatic telephone  
13 dialing system. As such, this testimony should be stricken.

14 \\\

15 \\\

16 \\\

17 **Mr. Hall’s Testimony, Paragraph 8, Lacks Foundation And Is Improper**

18 Hall Decl., Para. 8:

19 “At no time did I give Defendant express consent to contact me on my cell phone via an  
20 automatic telephone dialing system.”

21 Defendant’s Objections:

22 **Improper Lay Opinion: Fed. R. Evid. 701.** Under Federal Rule of Evidence 701, if a witness  
23 is not testifying as an expert, his testimony is limited to one that is “(a) rationally based on the witness’s  
24 perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue;  
25 and (3) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”  
26 Here, there is no evidence that Mr. Hall is being put forth to offer expert testimony, yet he opines that  
27 Defendant contacted him “via an automatic telephone dialing system.” There is no indication that Mr.  
28 Hall has ever examined Defendant’s technology system or has any information regarding Defendant’s

technology system. Mr. hall has absolutely no personal knowledge regarding Defendant's technology, and could not opine on it if he did as he has not been qualified to do so.

**Lacks Foundation: Fed. R. Evid. 602.** Mr. Toth has no personal knowledge regarding Defendant's technology. Without personal knowledge, his opinions lack foundation and thus must be disregarded.

## **EVIDENTIARY OBJECTIONS TO DECLARATION OF DANNY HOREN**

**Mr. Horen's Testimony, Paragraph 5, Lacks Foundation And Is Hearsay.**

Horen Decl., Para. 5:

“Attached hereto as Exhibit B is a true and correct copy of a screenshot of the Livevox predictive dialer application page, taken from <http://www.livevox.com/applications/predictive-dialer/> on December 27, 2013.”

Defendant's Objections:

**Lack of Personal Knowledge: Fed. R. Evid. 602.** Rule 56(e) of the Federal Rules of Civil Procedure requires that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” In reviewing motions for summary judgment, courts may not consider affidavits or declarations that do not comply with these requirements. *School Dist. 1J v. AC and S*, 5 F.3rd 1255, 1261 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1983); *United States v. M.E. Dibble*, 429 F.2d 598, 601 (9th Cir. 1970).

All matters set forth in declarations must be based on personal knowledge and statements in a declaration are inadmissible unless the declaration itself affirmatively demonstrates that the declarant has personal knowledge of those facts. *Love v. Commerce Bank of St. Louis, N.A.*, 37 F.3d 1295, 1296 (8th Cir. 1994); *Gagne v. Northwestern Nat'l Ins. Co.*, 881 F.2d 309, 315-16 (6th Cir. 1989) (holding that statements in affidavits that are not based on personal knowledge and personal observation do not contain facts that are admissible evidence for summary judgment purposes) (overruled on other grounds by *Wright v. Murray Guard, Inc.*, 455 F.3d 702 (6th Cir. 2006)).

To be admissible to support or oppose a motion for summary judgment, declarations must also

1 set out specific facts – not mere conclusory allegations. *Lujan v. National Wildlife Fed'n*, 497 U.S. 871,  
 2 888 (1990) (holding that the object of Rule 56 is not to replace conclusory averments in a pleading with  
 3 conclusory allegations in an affidavit). In addition, Rule 56(e) requires that declarations contain  
 4 statements that would be otherwise “admissible in evidence,” so declarations cannot contain hearsay.  
 5 *Hal Roach Studios v. Richard Frier & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1984); *Matsushita Elec.*  
 6 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Finally, an attorney’s declaration is  
 7 governed by the same rules that apply to other declarants under Rule 56(e). Thus, an attorney’s  
 8 declaration is admissible only to prove facts that are within the attorney’s personal knowledge and based  
 9 on facts cited that support the conclusion that the attorney is competent to testify. *Sellers v. M.C. Floor*  
 10 *Crafters, Inc.*, 842 F.2d 639 (2nd Cir. 1988); *Friedel v. City of Madison*, 832 F.2d 965, 969 (7th Cir.  
 11 1987); *Local Union No. 490 v. Kirkhill Rubber Co.*, 367 F.2d 956, 958 (9th Cir. 1966).

12 Unless the party’s attorney has first-hand knowledge, no insistence on his part, not even his  
 13 declaration, can have probative force on a motion for summary judgment. *School Dist. No. 1J v.*  
 14 *ACandS, Inc.*, 5 F.3d 1255, 1261 (9th Cir. 1998) (affirmed summary judgment because attorney  
 15 affidavit did not provide facts or authenticated documents to support allegations), *cert. denied*, 512 U.S.  
 16 1236 (1993). Lacking personal knowledge, an attorney is not qualified to testify, and unauthenticated  
 17 documents cannot support an opposition to summary judgment. *Canada v. Blain's Helicopters, Inc.* 831  
 18 F.2d 920, 925 (9th Cir. 1987).

19 Here, Mr. Horen seeks to introduce as an exhibit a website screen shot, a document which he has  
 20 no personal knowledge. Fed. R. Evid. 602.

21 **Lack of Authentication/Foundation: Fed. R. Evid. 901.** Mr. Horen provides no testimony that  
 22 he has personal knowledge of the document such that he is able to authenticate it as required by the  
 23 Federal Rules of Evidence. Fed. R. Evid. 901; *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870, 883  
 24 (9th Cir. 1982) (“documents are required to be authenticated by affidavits or declarations of persons  
 25 with *personal knowledge* through whom they could be introduced at trial” (emphasis added)).

26 **Hearsay: Fed. R. Evid. 801, 802.** Exhibit B is an out of court statement improperly being  
 27 offered for the truth of what Plaintiffs assert. Fed. R. Evid. 801, 802; *see Blain's Helicopters, Inc.*,  
 28 *supra*, 831 F.2d at 925.

1  
2. **Mr. Horen's Testimony, Paragraph 7, Lacks Foundation.**

3 Horen Decl., Para. 7:

4 “Plaintiffs have retained a technology expert for purposes of discovery. Discovery will allow  
5 Plaintiffs to determine the number of calls Defendant made during the statutory period and size of the  
6 Class, as well as identify the type and capacity of the equipment Defendant used to call Plaintiffs.”

7 Defendant's Objections:

8 **Lacks Personal Knowledge: Fed. R. Evid. 602.** Here, Mr. Horen, as Plaintiffs' trial counsel, is  
9 testifying as to matters outside his personal knowledge and merely offering conclusory, self-serving  
10 statements that he is not competent to make. He lacks personal knowledge; what he believes discovery  
11 will do for Plaintiffs is based on pure speculation; this statement does not constitute *facts*, and should  
12 therefore be disregarded. Fed. R. Evid. 602; *see Local Union No. 490, supra*, 367 F.2d at 958.

13  
14 **EVIDENTIARY OBJECTIONS TO PLAINTIFFS' EXHIBIT A**

15 1. **Exhibit A: Knutson et al. v. Schwan's Home Service, Inc., et al. Is Irrelevant.**

16 Order Denying In Part And Granting In Part Plaintiffs' Motion for Class Certification: 3:12-CV-  
17 0964-GPC-DHB, 2013 WL 4774763 (S.D. Cal. Sept. 5, 2013).

18 Defendant's Objections:

19 **Relevance: Fed. R. Evid. 401, 402.** “Evidence is relevant if (a) it has the tenancy to make a fact  
20 more or less probable than it would be without the evidence; and (b) the fact is of consequence in  
21 determining the action.” Here, the *Knutson* case is irrelevant to the ultimate issue – whether  
22 Defendant's technology meets the statutory definition of an automatic telephone dialing system.  
23 Additionally, *Knutson* concerns a Motion for Class Certification, which is an entirely different stage of  
24 litigation than what is at issue in the present matter. Because this case is inapposite to the issues raised  
25 by Defendant in its Motion for Summary Judgment, it should be completely disregarded.

26  
27 **EVIDENTIARY OBJECTIONS TO PLAINTIFFS' EXHIBIT B**

28 1. **Exhibit B: Screenshot from www.livevox.com.**

1       Defendant's Objections:

2       **Lack of Authentication/Foundation: Fed. R. Evid. 901.** Mr. Horen provides no testimony that  
3 he has personal knowledge of the document such that he is able to authenticate it as required by the  
4 Federal Rules of Evidence. Fed. R. Evid. 901; *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870, 883  
5 (9th Cir. 1982) (“documents are required to be authenticated by affidavits or declarations of persons  
6 with *personal knowledge* through whom they could be introduced at trial” (emphasis added)).

7       **Hearsay: Fed. R. Evid. 801, 802.** Exhibit B is an out of court statement improperly being  
8 offered for the truth of what Plaintiffs assert. Fed. R. Evid. 801, 802; *see Blain's Helicopters, Inc.,*  
9 *supra*, 831 F.2d at 925. Furthermore, “hearsay evidence may not be considered in deciding whether  
10 material facts are at issue in summary judgment motions.” *Paul v. Holland America Line, Inc.*, 463 F.  
11 Supp. 2d 1203, 1206 (W.D. Wash. 2006) *citing Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F.2d 665,  
12 667 (9th Cir. 1980). As such, this document must be disregarded for purposes of Defendant’s Motion.

13

14       EVIDENTIARY OBJECTIONS TO PLAINTIFFS’ EXHIBIT C

15 1.       Exhibit C: Resume of Jeffrey Hansen Lacks Authentication And Is Hearsay.

16       Defendant's Objections:

17       **Lack of Authentication/Foundation: Fed. R. Evid. 901.** Mr. Hansen provides no testimony  
18 that he has personal knowledge of the document nor does he authenticate Exhibit C as required by the  
19 Federal Rules of Evidence. Fed. R. Evid. 901; *Zoslaw, supra*, 693 F.2d at 883 (“documents are required  
20 to be authenticated by affidavits or declarations of persons with *personal knowledge* through whom they  
21 could be introduced at trial” (emphasis added)).

22       **Hearsay: Fed. R. Evid. 801, 802.** Exhibit C is an out of court statement improperly being  
23 offered for the truth of what Plaintiffs assert. Fed. R. Evid. 801, 802; *see Blain's Helicopters, Inc.,*  
24 *supra*, 831 F.2d at 925.

25

26       EVIDENTIARY OBJECTIONS TO PLAINTIFFS’ SEPARATE STATEMENT

27 1.       Paragraph 5: Hansen Declaration ¶ 7.

28       Paragraph 5:

1       “Disputed. Defendant used a dialer which constitutes an ATDS, under the TCPA. [Hansen Decl.  
 2 ¶ 7]”

3       Defendant’s Objections:

4       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 5 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert’s opinion to be admissible,  
 6 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 7 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert’s opinion cannot be  
 8 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 9 by “knowledge, skill, experience, training or education.” Fed. R. Evid. 702. The proponent of expert  
 10 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 11 525 (5th Cir. 2004).

12       In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 13 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 14 have ever examined Defendant’s technology system or even spoken with any employee, agent, or  
 15 representative of Defendant regarding Defendant’s technology system. Further, he fails to describe any  
 16 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 17 regarding Defendant’s technology. In fact, Plaintiffs’ counsel never even requested that Mr. Hansen  
 18 have the opportunity to examine Defendant’s technology system, even after Defendant’s counsel made  
 19 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 20 and his testimony stricken.

21       Mr. Hansen is not qualified to testify as an expert on Defendant’s technology, nor is he qualified  
 22 to opine on the Federal Communication Commission’s Orders. Plaintiffs present no evidence to suggest  
 23 that Mr. Hansen is qualified to comment upon the legal definition of an automatic telephone dialing  
 24 system, or ATDS, which has been defined by Congress at 47 U.S.C. § 227(a)(1), a statute which has  
 25 been interpreted to have its plain meaning as stated in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d  
 26 946, 951 (9th Cir. 2009).

27       **Relevance: Fed. R. Evid. 401, 402.** An expert’s opinion must be relevant. *Pipitone v.*  
 28 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert’s opinion is based on scientific studies

1 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 2 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 3 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 4 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 5 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 6 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
 7 Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
 8 dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
 9 though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
 10 thus, it should be disregarded.

11       **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
 12 Defendant's technology. Without personal knowledge, his opinions lack foundation and thus must be  
 13 disregarded.

14

15 2.       **Paragraphs 5 & 6: Hansen Declaration ¶ 4.**

16       “[T]he characteristics of the Livevox dialing system meet the definition of equipment that has the  
 17 capacity to store or produce numbers to be called, using a random or sequential number generator, and  
 18 the capacity to call such numbers. [Hansen Decl. ¶ 4]”

19 \\\\

20       Defendant's Objections:

21       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from  
 22 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,  
 23 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 24 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
 25 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 26 by “knowledge, skill, experience, training or education.” Fed. R. Evid. 702. The proponent of expert  
 27 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 28 525 (5th Cir. 2004).

1       In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 2 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 3 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
 4 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any  
 5 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 6 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
 7 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
 8 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 9 and his testimony stricken.

10       Mr. Hansen is not qualified to testify as an expert on Defendant's technology, nor is he qualified  
 11 to opine on the Federal Communication Commission's Orders. Plaintiffs present no evidence to suggest  
 12 that Mr. Hansen is qualified to comment upon the legal definition of an automatic telephone dialing  
 13 system, or ATDS, which has been defined by Congress at 47 U.S.C. § 227(a)(1), a statute which has  
 14 been interpreted to have its plain meaning as stated in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d  
 15 946, 951 (9th Cir. 2009).

16       **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
 17 *Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 18 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 19 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 20 determine the conclusion. See *General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,  
 21 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
 22 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
 23 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
 24 Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
 25 dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
 26 though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
 27 thus, it should be disregarded.

28       **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding

1 Defendant's technology. Without personal knowledge, his opinions lack foundation and thus must be  
 2 disregarded.

3       4. **Paragraphs 5 & 6: Use of Policy Rather Than Evidence Is Improper.**

5       6 “[A] predictive dialer is equipment that dials numbers and, when certain computer software is  
 7 attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The  
 8 hardware, when paired with certain software, has the capacity to store or produce numbers and dial those  
 9 numbers at random, in sequential order, or from a database of numbers.” [In the Matter of Rules and  
 10 Regulations Implementing the Tel. Consumer Prot. Act of 1991, 18 F.C.C.R. 14014, 14091-93 (2003)].  
 11 The basic function of such (calling) equipment, however, has not changed – the capacity to dial numbers  
 without human intervention. [Id. at 14092]”

12       Defendant's Objections:

13       **Failure to Cite to Evidence: Fed. R. Civ. P. 56(c).** Under the Federal Rules of Civil Procedure  
 14 56(c)(1)(A), “[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion  
 15 by: (A) citing to particular parts of materials in the record, including depositions, documents,  
 16 electronically stored information, affidavits or declarations, stipulations (including those made for  
 17 purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that  
 18 the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party  
 19 cannot produce admissible evidence to support the fact.”

20       Here, Plaintiffs fail to cite to any admissible evidence in opposition to Defendant's Motion but  
 21 improperly rely upon administrative policy. This submission should be disregarded by the Court.

22       4. **Paragraph 5: Hansen Declaration ¶ 5.**

23       “The fact that Defendant's dialer places predictive dialed calls to numbers stored by Defendant's  
 24 dialing system has the capacity to dial numbers without human intervention, thereby meeting the  
 25 definition of an ATDS.”

26       Defendant's Objections:

27       **Expert is not qualified: Fed. R. Evid. 702.** Defendant objects to all of the testimony from

1 Jeffrey A. Hansen, as he has not been qualified as an expert. For an expert's opinion to be admissible,  
 2 the expert must first be qualified. *See Fed. R. Evid. 702; Kumho Tire Co. v. Carmichael*, 526 U.S. 137,  
 3 152 (1999); *Hendrix v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010) (expert's opinion cannot be  
 4 connected to facts by *ipse dixit* of expert, i.e. because the expert said so). An expert must be qualified  
 5 by "knowledge, skill, experience, training or education." Fed. R. Evid. 702. The proponent of expert  
 6 testimony has the burden of showing that the testimony is reliable. *United States v. Hicks*, 389 F.3d 514,  
 7 525 (5th Cir. 2004).

8 In this case, there is no evidence put forth that satisfies the factors for expert reliability in  
 9 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593-95 (1993). Here, Mr. Hansen does not claim to  
 10 have ever examined Defendant's technology system or even spoken with any employee, agent, or  
 11 representative of Defendant regarding Defendant's technology system. Further, he fails to describe any  
 12 of the tests he performed or scientific studies he conducted that formed the basis for his statements  
 13 regarding Defendant's technology. In fact, Plaintiffs' counsel never even requested that Mr. Hansen  
 14 have the opportunity to examine Defendant's technology system, even after Defendant's counsel made  
 15 the offer. (Flynn Dec., ¶ 23.) Because Mr. Hansen is not qualified, his testimony should be disregarded  
 16 and his testimony stricken.

17 Mr. Hansen is not qualified to testify as an expert on Defendant's technology, nor is he qualified  
 18 to opine on the Federal Communication Commission's Orders. Plaintiffs present no evidence to suggest  
 19 that Mr. Hansen is qualified to comment upon the legal definition of an automatic telephone dialing  
 20 system, or ATDS, which has been defined by Congress at 47 U.S.C. § 227(a)(1), a statute which has  
 21 been interpreted to have its plain meaning as stated in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d  
 22 946, 951 (9th Cir. 2009).

23  
 24 **Relevance: Fed. R. Evid. 401, 402.** An expert's opinion must be relevant. *Pipitone v.*  
*Biomatrix, Inc.*, 288 F.3d 239, 2445 (5th Cir. 2002). If the expert's opinion is based on scientific studies  
 25 dissimilar to the facts of the case and does not provide reasons for drawing his conclusion from these  
 26 studies, the opinion is irrelevant, as it only provides jurors with a conclusion instead of a framework to  
 27 determine the conclusion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 144-56 (1997). In this case,

1 Mr. Hansen has not conducted any studies, scientific or otherwise, involving Defendant's technology.  
2 In fact, Mr. Hansen fails to state that he ever even examined Defendant's technology system. Even if  
3 Mr. Hansen had conducted studies of other technology systems, those studies would be irrelevant.  
4 Furthermore, Mr. Hansen improperly assumes facts. He assumes that Defendant's system (1) uses a  
5 dialer (2) which places predictive dialed calls to numbers (3) which are stored by Defendant, even  
6 though he has no personal knowledge of any of these statements. Mr. Hansen's testimony is conclusory,  
7 thus, it should be disregarded.

8       **Lacks Foundation: Fed. R. Evid. 602.** Mr. Hansen has no personal knowledge regarding  
9 Defendant's technology. Without personal knowledge, his opinions lack foundation and thus must be  
10 disregarded.

11

12       **5. Paragraphs 5 & 6: Use of Policy Rather Than Evidence Is Improper.**

13       “Equipment that dials a list of numbers (such as a business’s list of customers), rather than dials  
14 random or sequential numbers, is still an ATDS. [Gragg v. Orange Cab Co., 2013 U.S. Dist. LEXIS  
15 60174, \*4 (W.D. Wash. Apr. 26, 2013)(internal quotations omitted)]”

16       Defendant’s Objections:

17       **Failure to Cite to Evidence: Fed. R. Civ. P. 56(c).**

18       Under the Federal Rules of Civil Procedure 56(c)(1)(A), “[a] party asserting that a fact cannot be  
19 or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the  
20 record, including depositions, documents, electronically stored information, affidavits or declarations,  
21 stipulations (including those made for purposes of the motion only), admissions, interrogatory answers,  
22 or other materials; or (B) showing that the materials cited do not establish the absence or presence of a  
23 genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.”

24       Here, Plaintiffs fail to cite to any admissible evidence in opposition to Defendant’s Motion but  
25 improperly rely upon case law. This submission should be disregarded by the Court.

26       \\\\

27       \\\\

28       \\\\

## **CONCLUSION**

Based upon the objections above, the Court should strike from the record the improper evidence offered by Plaintiffs, TIMOTHY TOTH and GARY HALL, in Opposition to Defendant STELLAR RECOVERY, INC.'s Motion for Summary Judgment.

Dated: January 21, 2014

**FOLEY & MANSFIELD, PLLP**

By: /s/ Sean P. Flynn

Sean P. Flynn  
Attorney for Defendant  
**STELLAR RECOVERY, INC.**

1                   **PROOF OF SERVICE**

2                   **STATE OF NEVADA, COUNTY OF CLARK:**

3                   I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
4                   not a party to the within action; my business address is 300 S. Grand Ave., Suite 2800, Los Angeles, CA  
90071.

5                   On January 21, 2014, I served the foregoing document described as:

6                   **DEFENDANT'S EVIDENTIARY OBJECTIONS TO, AND REQUEST TO STRIKE  
7                   PORTIONS OF, PLAINTIFFS' EVIDENCE SUBMITTED IN SUPPORT OF ITS OPPOSITION  
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.**

8                   On the following persons:

9                   David Krieger, Esq. 10                   HAINES & KRIEGER, LLC 11                   8985 S. Eastern Avenue 12                   Suite 130 13                   Henderson, Nevada 89123	14                   Attorney for Plaintiffs
15                   Danny J. Horen, Esq. 16                   Kazerouni Law Groups, APC 17                   7854 W. Sahara Avenue 18                   Las Vegas, NV 89117	19                   Attorney for Plaintiffs

20                    **(BY COURT'S CM/ECF SYSTEM)** Pursuant to Local Rule, I electronically filed the documents  
21                   with the Clerk of the Court using the CM/ECF systems, to the parties and/or counsel who are  
22                   registered CM/ECF Users set forth in the service list contained from this court.

23                    **[FEDERAL]** I declare that I am employed in the office of a member of the bar of this Court at  
24                   whose direction the service was made.

25                   Executed on January 21, 2014, Los Angeles, California.

26                   \_\_\_\_\_  
27                   /s/ *Martina Lopez*  
28                   Martina Lopez